IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

WP(C).No. 33491 of 2006(K)

CMA.47/2004 of I ADDL. DISTRICT COURT, TRIVANDRUM
OS.839/1992 of II ADDL.M.C.,TRIVANDRUM

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PETITIONER:

PADMAKSHIAMMA, D/O. PONNAMMA,
CHEMMANUVILAKATHU PUTHEN VEETTIL,
AYAKKOTTUKONAM, UPPANILLYOOR DESOM,
NEMOM, THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.M.R.SARIN
SRI.HARISH GOPINATH
SRI.V.VINAY MENON

RESPONDENTS:

P.ABUBAKERKUNJU,
MULAMOOTTUVILAKATHU VEETTIL, PAPPANAMCODE,
NEMOM VILLAGE, THIRUVANANTHAPURAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

W.P.C.NO.33491 OF 2006 (K)

Dated this the 18 th day of December, 2006.

JUDGMENT

Petitioner is defendant in O.S.839/92 on the file of IInd Additional Munsiff Court, Thiruvananthapuram. Respondent is plaintiff. Suit was for redemption of the mortgage and consequential reliefs. In that suit petitioner claimed benefits under the Kerala Land Reforms Act. Suit was referred to Land Tribunal under Section 125(3) of the Kerala Land Reforms Act. Before that order an order of injunction was granted which was challenged before the Appellate court in C.M.A.51/96. When the reference case was pending before Land Tribunal, learned Munsiff dismissed the suit for non appearance of respondent. Subsequently reference was answered. C.M.A.51/96 disposed as petitioner withdraw the same. Respondent filed I.A.38/03 and 51/03 before the Munsiff Court, for restoration of suit after condoning the delay. learned Munsiff under Ext.P3 order dismissed the application. Respondent challenged that order

before District Court, Thiruvananthapuram in C.M.A.47/04. Under Ext.P4 order, learned District Judge allowed the appeal and restored the suit on condition of payment of cost of Rs.1,500/- to be paid or deposited within one week from 24.5.06. Respondent did not deposit that amount within seven days as directed under Ext.P4. I.A.1553/06 was filed for extending the time for depositing the cost. Under Ext.P10 order, that was allowed. This petition is filed under Article 227 of Constitution of India to challenge Ext.P10 order.

2. Learned counsel appearing for petitioner was heard.

3. Argument of learned counsel appearing for petitioner was that under Ext.P4 order, learned District Judge directed payment or deposit of cost within one week providing that on such payment or deposit, the suit shall be restored. The order does not further provide that on failure to pay or deposit the amount, the appeal will stand dismissed. Learned Additional District Judge under Ext.P9, received payment made by the

respondent out of time and allowed the C.M.A47/04 and restored the suit. On the facts and circumstances of the case, I do not find any reason to interfere with the order in exercise of the extra ordinary jurisdiction of this court under Article 227 of constitution of India, as the bye product of the order is only justice.

M.SASIDHARAN NAMBIAR,
JUDGE.

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